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6
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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke Probation
Against:

Case No. 2005-153

12 JOSEPH PAUL BOEVER
13 3448 Acacia Avenue
14 San Bernardino, CA 92405

**PETITION TO REVOKE
PROBATION**

15 Registered Nurse License No. 675801

16 Respondent.

17 Complainant alleges:

18 PARTIES

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Petition to
20 Revoke Probation solely in her official capacity as the Executive Officer of the Board of
21 Registered Nursing, Department of Consumer Affairs (Board).

22 2. On or about March 15, 2006, the Board issued Registered Nurse License
23 No. 675801 to Joseph Paul Boever (Respondent). The Registered Nurse License was in effect at
24 all times relevant to the charges brought herein and will expire on November 30, 2007, unless
25 renewed.

26 3. In a disciplinary action entitled "In the Matter of Statement of Issues
27 Against Joseph Paul Boever," Case No. 2005-153, the Board of Registered Nursing, issued a
28 decision, effective March 14, 2006, in which Respondent's Registered Nurse License was

1 revoked. However, the revocation was stayed and Respondent's was placed on probation for a
2 period of three (3) years with certain terms and conditions. A copy of that decision is attached as
3 Exhibit A and incorporated by reference.

4 TERMS OF PROBATION

5 4. *Among the terms and conditions imposed by the Board in Case No.*
6 *2005-153, are:*

7 2. **Comply with the Board's Probation Program.** Respondent shall fully
8 comply with the conditions of the Probation Program established by the Board
9 and cooperate with representatives of the Board in its monitoring and
10 investigation of the Respondent's compliance with the Board's Probation
11 Program. Respondent shall inform the Board in writing within no more than 15
12 days of any address change and shall at all times maintain an active, current
13 license status with the Board, including during any period of suspension.

14 Upon successful completion of probation, Respondent's license shall be
15 fully restored.

16 3. **Report in Person.** Respondent, during the period of probation, shall
17 appear in person at interviews/meetings as directed by the Board or its designated
18 representatives.

19 13. **Physical Examination.** Within 45 days of the effective date of this
20 Decision, Respondent, at his expense, shall have a licensed physician, nurse
21 practitioner, or physician assistant, who is approved by the Board before the
22 assessment is performed, submit an assessment of the Respondent's physical
23 condition and capability to perform the duties of a registered nurse. Such an
24 assessment shall be submitted in a format acceptable to the Board. If medically
25 determined, a recommended treatment program will be instituted and followed by
26 the Respondent with the physician, nurse practitioner, or physician assistant
27 providing written reports to the Board on forms provided by the Board.

28 If Respondent is determined to be unable to practice safely as a registered
nurse, the licensed physician, nurse practitioner, or physician assistant making this
determination shall immediately notify the Board and Respondent by telephone,
and the Board shall request that the Attorney General's office prepare an
accusation or petition to revoke probation. Respondent shall immediately cease
practice and shall not resume practice until notified by the Board. During this
period of suspension, Respondent shall not engage in any practice for which a
license issued by the Board is required until the Board has notified Respondent
that a medical determination permits Respondent to resume practice. This period
of suspension will not apply to the reduction of this probationary time period.

If Respondent fails to have the above assessment submitted to the Board
within the 45-day requirement, Respondent shall immediately cease practice and
shall not resume practice until notified by the Board. This period of suspension
will not apply to the reduction of this probationary time period. The Board may
waive or postpone this suspension only if significant, documented evidence of
mitigation is provided. Such evidence must establish good faith efforts by
Respondent to obtain the assessment, and a specific date for compliance must be
provided. Only one such waiver or extension may be permitted.

14. **Participate in Treatment/Rehabilitation Program for Chemical**

1 **Dependence.** Respondent, at his expense, shall successfully complete during the
2 probationary period or shall have successfully completed prior to commencement
3 of probation a Board-approved treatment/rehabilitation program of at least six
4 months duration. As required, reports shall be submitted by the program on forms
5 provided by the Board. If Respondent has not completed a Board-approved
6 treatment/rehabilitation program prior to commencement of probation,
7 Respondent, within 45 days from the effective date of the decision, shall be
8 enrolled in a program. If a program is not successfully completed within the first
9 nine months of probation, the Board shall consider Respondent in violation of
10 probation.

11 Based on Board recommendation, each week Respondent shall be required
12 to attend at least one, but no more than five 12-step recovery meetings or
13 equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse
14 support group as approved and directed by the Board. If a nurse support group is
15 not available, an additional 12-step meeting or equivalent shall be added.
16 Respondent shall submit dated and signed documentation confirming such
17 attendance to the Board during the entire period of probation. Respondent shall
18 continue with the recovery plan recommended by the treatment/rehabilitation
19 program or a licensed mental health examiner and/or other ongoing recovery
20 groups.

21 16. **Submit to Tests and Samples.** Respondent, at his expense, shall
22 participate in a random, biological fluid testing or a drug screening program which
23 the Board approves. The length of time and frequency will be subject to approval
24 by the Board. Respondent is responsible for keeping the Board informed of
25 Respondent's current telephone number at all times. Respondent shall also ensure
26 that messages may be left at the telephone number when he is not available and
27 ensure that reports are submitted directly by the testing agency to the Board, as
28 directed. Any confirmed positive finding shall be reported immediately to the
29 Board by the program and Respondent shall be considered in violation of
30 probation.

31 In addition, Respondent, at any time during the period of probation, shall
32 fully cooperate with the Board or any of its representatives, and shall, when
33 requested, submit to such tests and samples as the Board or its representatives
34 may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or
35 other controlled substances.

36 If Respondent has a positive drug screen for any substance not legally
37 authorized and not reported to the coordinating physician, nurse practitioner, or
38 physician assistant, and the Board files a petition to revoke probation or an
39 accusation, the Board may suspend Respondent from practice pending the final
40 decision on the petition to revoke probation or the accusation. This period of
41 suspension will not apply to the reduction of this probationary time period.

42 If Respondent fails to participate in a random, biological fluid testing or
43 drug screening program within the specified time frame, Respondent shall
44 immediately cease practice and shall not resume practice until notified by the
45 Board. After taking into account documented evidence of mitigation, if the Board
46 files a petition to revoke probation or an accusation, the Board may suspend
47 Respondent from practice pending the final decision on the petition to revoke
48 probation or the accusation. This period of suspension will not apply to the
49 reduction of this probationary time period.

50 17. **Mental Health Examination.** Respondent shall, within 45 days of the
51 effective date of this Decision, have a mental health examination including
52 psychological testing as appropriate to determine his capability to perform the
53 duties of a registered nurse. The examination will be performed by a psychiatrist,

1 psychologist or other licensed mental health practitioner approved by the Board.
2 The examining mental health practitioner will submit a written report of that
3 assessment and recommendations to the Board. All costs are the responsibility of
4 Respondent. Recommendations for treatment, therapy or counseling made as a
5 result of the mental health examination will be instituted and followed by
6 Respondent.

7 If Respondent is determined to be unable to practice safely as a registered
8 nurse, the licensed mental health care practitioner making this determination shall
9 immediately notify the Board and Respondent by telephone, and the Board shall
10 request that the Attorney General's office prepare an accusation or petition to
11 revoke probation. Respondent shall immediately cease practice and may not
12 resume practice until notified by the Board. During this period of suspension,
13 Respondent shall not engage in any practice for which a license issued by the
14 Board is required, until the Board has notified Respondent that a mental health
15 determination permits Respondent to resume practice. This period of suspension
16 will not apply to the reduction of this probationary time period.

17 If Respondent fails to have the above assessment submitted to the Board
18 within the 45-day requirement, Respondent shall immediately cease practice and
19 shall not resume practice until notified by the Board. This period of suspension
20 will not apply to the reduction of this probationary time period. The Board may
21 waive or postpone this suspension only if significant, documented evidence of
22 mitigation is provided. Such evidence must establish good faith efforts by
23 Respondent to obtain the assessment, and a specific date for compliance must be
24 provided. Only one such waiver or extension may be permitted.

25 JURISDICTION

26 5. This Petition to Revoke Probation is brought before the Board, under the
27 authority of the following laws. All Section references are to the Business and Professions Code
28 unless otherwise indicated.

6. Section 2750 provides, in pertinent part, that the Board may discipline any
licensee, including a licensee holding a temporary or an inactive license, for any reason provided
in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 provides, in pertinent part, that the expiration of a license
shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
licensee or to render a decision imposing discipline on the license. Under section 2811,
subdivision (b), the Board may renew an expired license at any time within eight years after the
expiration.

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1 FIRST CAUSE TO REVOKE PROBATION

2 (Failure to Fully Comply with Probation)

3 8. Respondent's probation is subject to revocation because he failed to
4 comply with Probation Condition 2, in that he failed to comply as stated herein.

5 SECOND CAUSE TO REVOKE PROBATION

6 9. Respondent's probation is subject to revocation because he failed to
7 comply with Probation Condition 3, in that he failed to report in person, by failing to show up for
8 his scheduled meeting with Board representative (monitor) on November 29, 2006.

9 THIRD CAUSE TO REVOKE PROBATION

10 10. Respondent's probation is subject to revocation because he failed to
11 comply with Probation Condition 13, in that he failed to follow a treatment plan as recommended
12 by a licensed physician.

13 FOURTH CAUSE TO REVOKE PROBATION

14 11. Respondent's probation is subject to revocation because he failed to
15 comply with Probation Condition 14, in that he failed to participate in treatment, by failing to
16 provide evidence of attendance for Nurse Support Group meetings form September 2006 to
17 December 2006.

18 FIFTH CAUSE TO REVOKE PROBATION

19 12. Respondent's probation is subject to revocation because he failed to
20 comply with Probation Condition 16, in that he failed respond to request for random drug
21 screening on : October 17, 2006, October 26, 2006, November 29, 2006, and December 14, 2006.

22 SIXTH CAUSE TO REVOKE PROBATION

23 13. Respondent's probation is subject to revocation because he failed to
24 comply with Probation Condition 17, in that he failed to provide evidence of a completed Mental
25 Health Examination by the due date of July 13, 2006.

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1 PRAYER


2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking the probation that was granted by the Board of Registered
5 Nursing in Case No. 2005-153 and imposing the disciplinary order that was stayed thereby
6 revoking Registered Nurse License No. 675801 issued to Joseph Paul Boever;

7 2. Revoking or suspending Registered Nurse License No. 675801, issued to
8 Joseph Paul Boever;

9 3. Taking such other and further action as deemed necessary and proper.

10
11 DATED: 11/5/07

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13 
14 RUTH ANN TERRY, M.P.H., R.N.
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California

19 Complainant

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Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2005-153

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

JOSEPH PAUL BOEVER
3448 Acacia Avenue
San Bernardino, CA 92405

Case No. 2005-153

Respondent

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on **March 14, 2006**.

IT IS SO ORDERED **February 14, 2006**



Vice-President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 BILL LOCKYER, Attorney General
of the State of California
2 GILLIAN E. FRIEDMAN, State Bar No. 169207
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6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues Against:

Case No. 2005-153

12 JOSEPH PAUL BOEVER
3448 Acacia Avenue
13 San Bernardino, CA 92405

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14
15
16 Respondent.

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18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
22 the Board of Registered Nursing. She brought this action solely in her official capacity and is
23 represented in this matter by Bill Lockyer, Attorney General of the State of California, by Gillian
24 E. Friedman, Deputy Attorney General.

25 2. Respondent Joseph Paul Boever is represented in this proceeding by
26 attorney Philip R. Manson, Esq., whose address is 1501 E. 60th Street N., Sioux Falls, South
27 Dakota 57104.

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3. On or about July 11, 2003, Respondent filed an application dated July 10, 2003, with the Board of Registered Nursing to obtain an RN Licensure by Endorsement.

JURISDICTION

4. Statement of Issues No. 2005-153 was filed before the Board of Registered Nursing (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on March 1, 2005. Respondent timely filed his Notice of Defense contesting the Statement of Issues. A copy of Statement of Issues No. 2005-153 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. 2005-153. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 2005-153.

9. Respondent agrees that his RN Licensure by Endorsement is subject to denial and he agrees to be bound by the Board's imposition of discipline as set forth in the

1 Disciplinary Order below.

2 CONTINGENCY

3 10. This stipulation shall be subject to approval by the Board of Registered
4 Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the
5 Board of Registered Nursing may communicate directly with the Board regarding this stipulation
6 and settlement, without notice to or participation by Respondent or his counsel. By signing the
7 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
8 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
9 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
10 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
11 action between the parties, and the Board shall not be disqualified from further action by having
12 considered this matter.

13 11. The parties understand and agree that facsimile copies of this Stipulated
14 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
15 force and effect as the originals.

16 12. In consideration of the foregoing admissions and stipulations, the parties
17 agree that the Board may, without further notice or formal proceeding, issue and enter the
18 following Disciplinary Order:

19 DISCIPLINARY ORDER

20 The application of Respondent Joseph Paul Boever for licensure is hereby granted
21 and granted a license shall be issued to Respondent upon successful completion of all licensing
22 requirements. Said license shall immediately be revoked, the order of revocation stayed and
23 Respondent placed on probation for a period of three (3) years on the following conditions:
24 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws.
25 A full and detailed account of any and all violations of law shall be reported by Respondent to
26 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of
27 compliance with this condition, Respondent shall submit completed fingerprint forms and
28 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted

1 as part of the licensure application process.

2 **Criminal Court Orders:** If Respondent is under criminal court orders, including
3 probation or parole, and the order is violated, this shall be deemed a violation of these probation
4 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

5 2. **Comply with the Board's Probation Program.** Respondent shall fully
6 comply with the conditions of the Probation Program established by the Board and cooperate
7 with representatives of the Board in its monitoring and investigation of the Respondent's
8 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
9 within no more than 15 days of any address change and shall at all times maintain an active,
10 current license status with the Board, including during any period of suspension.

11 Upon successful completion of probation, Respondent's license shall be fully
12 restored.

13 3. **Report in Person.** Respondent, during the period of probation, shall
14 appear in person at interviews/meetings as directed by the Board or its designated
15 representatives.

16 4. **Residency, Practice, or Licensure Outside of State.** Periods of
17 residency or practice as a registered nurse outside of California shall not apply toward a reduction
18 of this probation time period. Respondent's probation is tolled, if and when he resides outside of
19 California. Respondent must provide written notice to the Board within 15 days of any change of
20 residency or practice outside the state, and within 30 days prior to re-establishing residency or
21 returning to practice in this state.

22 Respondent shall provide a list of all states and territories where he has ever been
23 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
24 provide information regarding the status of each license and any changes in such license status
25 during the term of probation. Respondent shall inform the Board if he applies for or obtains a
26 new nursing license during the term of probation.

27 5. **Submit Written Reports.** Respondent, during the period of probation,
28 shall submit or cause to be submitted such written reports/declarations and verification of actions

1 under penalty of perjury, as required by the Board. These reports/declarations shall contain
2 statements relative to Respondent's compliance with all the conditions of the Board's Probation
3 Program. Respondent shall immediately execute all release of information forms as may be
4 required by the Board or its representatives.

5 Respondent shall provide a copy of this Decision to the nursing regulatory agency
6 in every state and territory in which he has a registered nurse license.

7 **6. Function as a Registered Nurse.** Respondent, during the period of
8 probation, shall engage in the practice of registered nursing in California for a minimum of 24
9 hours per week for 6 consecutive months or as determined by the Board.

10 For purposes of compliance with the section, "engage in the practice of registered
11 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
12 work in any non-direct patient care position that requires licensure as a registered nurse.

13 The Board may require that advanced practice nurses engage in advanced practice
14 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
15 Board.

16 If Respondent has not complied with this condition during the probationary term,
17 and Respondent has presented sufficient documentation of his good faith efforts to comply with
18 this condition, and if no other conditions have been violated, the Board, in its discretion, may
19 grant an extension of Respondent's probation period up to one year without further hearing in
20 order to comply with this condition. During the one year extension, all original conditions of
21 probation shall apply.

22 **7. Employment Approval and Reporting Requirements.** Respondent
23 shall obtain prior approval from the Board before commencing or continuing any employment,
24 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
25 performance evaluations and other employment related reports as a registered nurse upon request
26 of the Board.

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Respondent shall provide a copy of this Decision to his employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. **Supervision.** Respondent shall obtain prior approval from the Board regarding Respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) **Maximum** - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) **Moderate** - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) **Minimum** - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) **Home Health Care** - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual

1 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
2 site visits to patients' homes visited by Respondent with or without Respondent present.

3 **9. Employment Limitations.** Respondent shall not work for a nurse's
4 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
5 traveling nurse, or for an in-house nursing pool.

6 Respondent shall not work for a licensed home health agency as a visiting nurse
7 unless the registered nursing supervision and other protections for home visits have been
8 approved by the Board. Respondent shall not work in any other registered nursing occupation
9 where home visits are required.

10 Respondent shall not work in any health care setting as a supervisor of registered
11 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
12 nurses and/or unlicensed assistive personnel on a case-by-case basis.

13 Respondent shall not work as a faculty member in an approved school of nursing
14 or as an instructor in a Board approved continuing education program.

15 Respondent shall work only on a regularly assigned, identified and predetermined
16 worksite(s) and shall not work in a float capacity.

17 If Respondent is working or intends to work in excess of 40 hours per week, the
18 Board may request documentation to determine whether there should be restrictions on the hours
19 of work.

20 **10. Complete a Nursing Course(s).** Respondent, at his own expense, shall
21 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
22 than six months prior to the end of his probationary term.

23 Respondent shall obtain prior approval from the Board before enrolling in the
24 course(s). Respondent shall submit to the Board the original transcripts or certificates of
25 completion for the above required course(s). The Board shall return the original documents to
26 Respondent after photocopying them for its records.

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1 **11. Violation of Probation.** If Respondent violates the conditions of his
2 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
3 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's
4 license.

5 If during the period of probation, an accusation or petition to revoke probation has
6 been filed against Respondent's license or the Attorney General's Office has been requested to
7 prepare an accusation or petition to revoke probation against Respondent's license, the
8 probationary period shall automatically be extended and shall not expire until the accusation or
9 petition has been acted upon by the Board.

10 **12. License Surrender.** During Respondent's term of probation, if he ceases
11 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
12 probation, Respondent may surrender his license to the Board. The Board reserves the right to
13 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
14 take any other action deemed appropriate and reasonable under the circumstances, without
15 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
16 will no longer be subject to the conditions of probation.

17 Surrender of Respondent's license shall be considered a disciplinary action and
18 shall become a part of Respondent's license history with the Board. A registered nurse whose
19 license has been surrendered may petition the Board for reinstatement no sooner than the
20 following minimum periods from the effective date of the disciplinary decision:

21 (1) Two years for reinstatement of a license that was surrendered for any
22 reason other than a mental or physical illness; or

23 (2) One year for a license surrendered for a mental or physical illness.

24 **13. Physical Examination.** Within 45 days of the effective date of this
25 Decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or
26 physician assistant, who is approved by the Board before the assessment is performed, submit an
27 assessment of the Respondent's physical condition and capability to perform the duties of a
28 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If

1 medically determined, a recommended treatment program will be instituted and followed by the
2 Respondent with the physician, nurse practitioner, or physician assistant providing written
3 reports to the Board on forms provided by the Board.

4 If Respondent is determined to be unable to practice safely as a registered nurse,
5 the licensed physician, nurse practitioner, or physician assistant making this determination shall
6 immediately notify the Board and Respondent by telephone, and the Board shall request that the
7 Attorney General's office prepare an accusation or petition to revoke probation. Respondent
8 shall immediately cease practice and shall not resume practice until notified by the Board.
9 During this period of suspension, Respondent shall not engage in any practice for which a license
10 issued by the Board is required until the Board has notified Respondent that a medical
11 determination permits Respondent to resume practice. This period of suspension will not apply
12 to the reduction of this probationary time period.

13 If Respondent fails to have the above assessment submitted to the Board within
14 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
15 practice until notified by the Board. This period of suspension will not apply to the reduction of
16 this probationary time period. The Board may waive or postpone this suspension only if
17 significant, documented evidence of mitigation is provided. Such evidence must establish good
18 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
19 provided. Only one such waiver or extension may be permitted.

20 **14. Participate in Treatment/Rehabilitation Program for Chemical**
21 **Dependence.** Respondent, at his expense, shall successfully complete during the probationary
22 period or shall have successfully completed prior to commencement of probation a Board-
23 approved treatment/rehabilitation program of at least six months duration. As required, reports
24 shall be submitted by the program on forms provided by the Board. If Respondent has not
25 completed a Board-approved treatment/rehabilitation program prior to commencement of
26 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
27 a program. If a program is not successfully completed within the first nine months of probation,
28 the Board shall consider Respondent in violation of probation.

1 Based on Board recommendation, each week Respondent shall be required to
2 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
3 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed
4 by the Board. If a nurse support group is not available, an additional 12-step meeting or
5 equivalent shall be added. Respondent shall submit dated and signed documentation confirming
6 such attendance to the Board during the entire period of probation. Respondent shall continue
7 with the recovery plan recommended by the treatment/rehabilitation program or a licensed
8 mental health examiner and/or other ongoing recovery groups.

9 **15. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
10 shall completely abstain from the possession, injection or consumption by any route of all
11 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when
12 the same are ordered by a health care professional legally authorized to do so as part of
13 documented medical treatment. Respondent shall have sent to the Board, in writing and within
14 fourteen (14) days, by the prescribing health professional, a report identifying the medication,
15 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the
16 medication will no longer be required, and the effect on the recovery plan, if appropriate.

17 Respondent shall identify for the Board a single physician, nurse practitioner or
18 physician assistant who shall be aware of Respondent's history of substance abuse and will
19 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
20 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
21 assistant shall report to the Board on a quarterly basis Respondent's compliance with this
22 condition. If any substances considered addictive have been prescribed, the report shall identify a
23 program for the time limited use of any such substances.

24 The Board may require the single coordinating physician, nurse practitioner, or
25 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
26 addictive medicine.

27 **16. Submit to Tests and Samples.** Respondent, at his expense, shall
28 participate in a random, biological fluid testing or a drug screening program which the Board

1 approves. The length of time and frequency will be subject to approval by the Board.
2 Respondent is responsible for keeping the Board informed of Respondent's current telephone
3 number at all times. Respondent shall also ensure that messages may be left at the telephone
4 number when he is not available and ensure that reports are submitted directly by the testing
5 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
6 to the Board by the program and Respondent shall be considered in violation of probation.

7 In addition, Respondent, at any time during the period of probation, shall fully
8 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
9 tests and samples as the Board or its representatives may require for the detection of alcohol,
10 narcotics, hypnotics, dangerous drugs, or other controlled substances.

11 If Respondent has a positive drug screen for any substance not legally authorized
12 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
13 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
14 from practice pending the final decision on the petition to revoke probation or the accusation.
15 This period of suspension will not apply to the reduction of this probationary time period.

16 If Respondent fails to participate in a random, biological fluid testing or drug
17 screening program within the specified time frame, Respondent shall immediately cease practice
18 and shall not resume practice until notified by the Board. After taking into account documented
19 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the
20 Board may suspend Respondent from practice pending the final decision on the petition to
21 revoke probation or the accusation. This period of suspension will not apply to the reduction of
22 this probationary time period.

23 **17. Mental Health Examination.** Respondent shall, within 45 days of the
24 effective date of this Decision, have a mental health examination including psychological testing
25 as appropriate to determine his capability to perform the duties of a registered nurse. The
26 examination will be performed by a psychiatrist, psychologist or other licensed mental health
27 practitioner approved by the Board. The examining mental health practitioner will submit a
28 written report of that assessment and recommendations to the Board. All costs are the

responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by Respondent.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified Respondent that a mental health determination permits Respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

18. **Therapy or Counseling Program.** Respondent, at his expense, shall participate in an on-going counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Philip R. Manson, Esq. I understand the stipulation and the effect it will have on my RN Licensure by Endorsement. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be

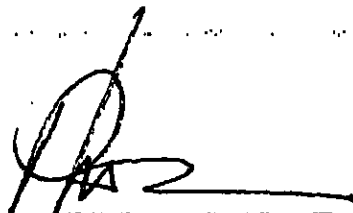
1 bound by the Decision and Order of the Board of Registered Nursing.

2 DATED: 6 OCT 05

3
4 
5 JOSEPH PAUL BOEVER
6 Respondent

7 I have read and fully discussed with Respondent Joseph Paul Boever the terms
8 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
9 Order. I approve its form and content.

10 DATED: 09.27.05

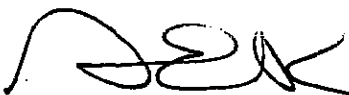
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12 
13 PHILIP R. MANSON, ESQ.
14 Attorney for Respondent

15 ENDORSEMENT

16 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
17 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
18 Affairs.

19
20 DATED: 10/25/05

21 BILL LOCKYER, Attorney
22 of the State

23
24 
25 GILLIAN E. FRIEDMAN
26 Deputy Attorney General
27 Attorneys for Complainant

BOARD OF
REGISTERED NURSING
SACRAMENTO

NOV 14 2005

RECEIVED

1 BILL LOCKYER, Attorney General
of the State of California
2 GILLIAN E. FRIEDMAN, State Bar No. 169207
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2564
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues Against:

Case No. 2005-153

12 JOSEPH PAUL BOEVER
3448 Acacia Avenue
13 San Bernardino, CA 92405

STATEMENT OF ISSUES

14
15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Statement of
20 Issues solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about July 11, 2003, the Board of Registered Nursing, Department
23 of Consumer Affairs received an Application for RN Licensure By Endorsement from Joseph
24 Paul Boever (Respondent). In his application, Respondent certified under penalty of perjury to
25 the truthfulness of all statements, answers, and representations in the application. The Board
26 denied the application on or about August 16, 2004.

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1 "(4) Denial of licensure, revocation, suspension, restriction, or any other
2 disciplinary action against a health care professional license or certificate by another state or
3 territory of the United States, by any other government agency, or by another California health
4 care professional licensing board. A certified copy of the decision or judgment shall be
5 conclusive evidence of that action.

6

7 "(f) Conviction of a felony or of any offense substantially related to the
8 qualifications, functions, and duties of a registered nurse, in which event the record of the
9 conviction shall be conclusive evidence thereof."

10 7. Health and Safety Code section 2762, which states:

11 "In addition to other acts constituting professional conduct within the meaning of
12 this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the
13 following:

14 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
15 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish
16 or administer to another, any controlled substance as defined in Division 10 (commencing with
17 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
18 defined in Section 4022.

19 "(b) Use any controlled substance as defined in Division 10 (commencing with
20 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as
21 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
22 injurious to himself or herself, any other person, or the public or to the extent that such use
23 impairs his or her ability to conduct with safety to the public the practice authorized by his or her
24 license.

25 "(c) Be convicted of a criminal offense involving the prescription, consumption,
26 or self-administration of any of the substances described in subdivisions (a) and (b) of this
27 section, or the possession of, or falsification of a record pertaining to, the substances described in
28 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence

1 thereof.”

2 8. CONTROLLED SUBSTANCE

3 A. “Marijuana” is a schedule I controlled substance as defined in Health and
4 Safety Code section 11054 (d) (13).

5 FIRST CAUSE FOR DENIAL OF APPLICATION

6 (Convictions of Substantially Related Crimes)

7 9. Respondent’s application is subject to denial under section 480,
8 subdivision (a)(1) for convictions of substantially related crimes as defined in section 2761(a) of
9 the Code and section 2762(c) of the Code in that Respondent was convicted in South Dakota of
10 possession of marijuana on November 28, 2000 and was convicted in South Dakota for driving
11 while under the influence on November 2, 1998 and October 26, 1993, as described more fully
12 below:

13 a. On or about November 28, 2000, Respondent was convicted on a plea of
14 guilty to one count of possession of marijuana, in the State of South Dakota, County of
15 Brookings, in Case No. 00-536, entitled *The People of the State of South Dakota v. Joseph P.*
16 *Boever*. The circumstances surrounding the conviction are that on or about August 14, 2000,
17 Brookings County police officers arrived at an automobile accident, wherein a truck in which
18 Respondent was a passenger had collided with a tree. During the investigation, the officer found
19 a cellophane wrapper that contained marijuana. Respondent was placed under arrest for
20 possession of marijuana.

21 b. On or about November 2, 1998, Respondent was convicted on a plea of
22 guilty to Driving While under the Influence (second offense) in the State of South Dakota, in
23 Case No. 98-0427, entitled *The People of the State of South Dakota v. Joseph Boever*. The
24 circumstances surrounding the conviction are that on or about July 19, 1998, Respondent was
25 stopped by a Brookings County police officer for running a stop sign. After Respondent was
26 given sobriety tests, the police officer concluded that Respondent was under the influence of
27 alcohol.

28 c. On or about October 26, 1993, Respondent was convicted on a plea of

1 guilty to Driving While under the Influence in the State of South Dakota, in the case entitled *The*
2 *People of the State of South Dakota v. Joseph P. Boever*.

3 SECOND CAUSE FOR DENIAL OF APPLICATION

4 (Dangerous Use of Alcoholic Beverages)

5 10. Respondent's application is subject to denial under section 480,
6 subdivision (a)(3) and Business and Professions Code sections 2761(a) and 2762(b), on the
7 grounds of unprofessional conduct in that Respondent administered to himself alcoholic
8 beverages to an extent or in a manner dangerous or injurious to himself, to any person, or to the
9 public, as set forth above in paragraph 9.

10 THIRD CAUSE FOR DENIAL OF APPLICATION

11 (Obtaining or Possessing a Controlled Substance)

12 11. Respondent's application is subject to denial under section 480,
13 subdivision (a)(3) and Business and Professions Code sections 2761(a) and 2762(a) on the
14 grounds of unprofessional conduct in that Respondent obtained, possessed, and self-administered
15 marijuana (a schedule I controlled substance) as set forth above in paragraph 9.

16 PRAYER

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein
18 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

19 1. Denying the Application for RN Licensure By Endorsement of Joseph
20 Paul Boever; and

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2. Taking such other and further action as deemed necessary and proper.

DATED: 2/14/05


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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CML (12/22/2004)